

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA

v.

JORDAN LEE BELL

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No. 4:17-CR-58-Y(01)

MOTION TO EXTEND SELF-SURRENDER REPORT DATE

COMES NOW, JORDAN LEE BELL, by and through his attorney, and hereby prays this court to extend his self-surrender reporting date for 60 days, or until the BOP gains control of the coronavirus outbreak in the federal prisons. Mr. Bell has been order to report to the BOP on May 18, 2020.

I. Heightened Precautions May Be Warranted During This Time of Crisis

COVID-19 is an extremely dangerous disease. There is no known vaccine or cure.¹ Although most of the deaths have occurred among individuals over the age of 65, recent data released by the CDC demonstrates that younger individuals—those between the ages of 20 to 54—are also at serious risk of needing hospitalization and intensive care. From February 12 to March 16, nearly 40 percent of American COVID-19 patients who were sick enough to be hospitalized were ages 20 to 54. Twelve percent of patients with the most critical cases, requiring admission to an Intensive Care Unit (ICU), were ages 20 to 44.²

¹ Centers for Disease Control and Prevention, *What You Need To Know About Coronavirus Disease 2019 (COVID-19)*, CDC (2020), <https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf>.

² Centers for Disease Control and Prevention, *Severe Outcomes Among Patients With Coronavirus Disease 2019 (COVID-19) – United States, February 12–March 16, 2020* (Mar. 27, 2020), https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e2.htm?s_cid=mm6912e2_w.

For people who contract COVID-19, the symptoms can be extremely severe. COVID-19 can cause intense pain, and recent research suggests that, in addition to the short-term risk of death posed by COVID-19, contracting the virus can lead to other serious long-term medical conditions, including cardiovascular disease and permanent reduction of lung function.³ As one respiratory physician explained, COVID-19 causes the lungs to “become filled with inflammatory material” and “are unable to get enough oxygen to the bloodstream.”⁴ This leads to acute respiratory distress syndrome, in which fluid displaces the air in the lungs. The sensation of that illness is akin to being drowned.⁵ The available data from the CDC to date shows that, in total, 20.7 to 31.4 percent of people who tested positive for COVID-19 require hospitalization, 4.9 to 11.5 percent require admission to the ICU, and 1.8 to 3.4 percent die.⁶ The World Health Organization estimates that the mortality rate is higher—between 3 and 4 percent.⁷

Conducting an in-person hearing under current circumstances may risk spreading the disease. According to the CDC, there is evidence that the disease can be spread by those who do not exhibit any symptoms:

We now know from recent studies that a significant portion of individuals with coronavirus lack symptoms (“asymptomatic”) and that even those who eventually develop symptoms (“pre-symptomatic”) can transmit the virus to others before

³ Tian-Yuan Xiong et al., *Coronaviruses and the Cardiovascular System: Acute and Long-Term Implications*, *European Heart Journal*, at 1 (2020).

⁴ Graham Readfearn, *What Happens to People’s Lungs When They Get Coronavirus*, *The Guardian*, (Mar. 24, 2020), <https://www.theguardian.com/world/2020/apr/01/what-happens-to-peoples-lungs-when-they-get-coronavirus-acute-respiratory-covid-19>.

⁵ Lizzie Presser, *A Medical Worker Describes Terrifying Lung Failure From COVID-19 — Even in His Young Patients*, *ProPublica*, (Mar. 21, 2020), <https://www.propublica.org/article/a-medical-worker-describes--terrifying-lung-failure-from-covid19-even-in-his-young-patients>.

⁶ *Severe Outcomes Among Patients with Coronavirus Disease 2019 (COVID-19) — United States, February 12–March 16, 2020*, CDC, at tbl. (2020), https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e2.htm?s_cid=mm6912e2_w.

⁷ *Coronavirus Disease 2019 (Covid-19) Situation Report – 46*, World Health Org, at p. 2 (2020), https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200306-sitrep-46-covid-19.pdf?sfvrsn=96b04adf_2.

showing symptoms. This means that the virus can spread between people interacting in close proximity—for example, speaking, coughing, or sneezing—even if those people are not exhibiting symptoms.⁸

For this reason, public health officials recommend that *all* individuals (not just those exhibiting symptoms) remain at least 6 feet apart, and wear facemasks to prevent transmission of the virus. *Id.* Taking these precautions, however, should be viewed as *minimum* safety measures, rather than a guarantee that if followed, the virus will not spread.⁹ Research demonstrates that the virus can live in the air for up to three hours,¹⁰ and that the virus can spread to areas more than 6 feet away from an infected person while that person is indoors. In a study published by physicists at Cornell University, the authors state, “we cannot find a good justification for a stationary 6-foot separation in a situation when people spend [a] long time together in a room.”¹¹ The authors explain that movement of air molecules in a room can follow complex patterns, which are affected by “the location of air conditioners, radiators, windows, and all items in the room, as well as on people producing vortices by moving around.” *Id.* Importantly, the physicists conclude that these complex patterns “in the air can make a location far away from the source of droplets *more dangerous* than the location 6 feet away.” *Id.* (emphasis added).

⁸ Centers for Disease Control and Prevention, *Recommendation Regarding the Use of Cloth Face Coverings, Especially in Areas of Significant Community-Based Transmission* (Apr. 3, 2020) <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html>.

⁹ As stated by the CDC, “It is critical to emphasize that maintaining 6-foot social distancing remains important to *slowing* the spread of the virus. CDC is additionally advising the use of simple cloth face coverings to slow the spread of the virus and help people who may have the virus and do not know it from transmitting it to others.” *See* CDC guidance, *supra* n. 7 (emphasis added).

¹⁰ Chris Ciaccia, *Coronavirus Can Remain in Air for 3 Hours, Live on Plastic for Days, New Study Says*, (Mar. 12, 2020), <https://www.foxnews.com/health/coronavirus-live-plastic-stainless-steel-for-up-to-3-days>. *See also* Neeltje van Doremalen, et. al, *Aerosol and Surface Stability of SARS-CoV-2 as Compared with SARS-CoV-1*, *New England J. Med.*, (March 17, 2020), [nejm.org/doi/10.1056/NEJMc2004973](https://doi.org/10.1056/NEJMc2004973).

¹¹ Anchordoqui LA, Chudnovsky EM. *A physicist view of the airborne infection*. Cornell University website. (Mar. 30, 2020), <https://arxiv.org/abs/2003.13689>.

Other studies support the conclusion that the virus can spread farther than 6 feet when indoors, depending on air conditioning and ventilation of the building. A study by the University of Nebraska Medical Center demonstrated that the virus was detected in air samples obtained at distances greater than 6 feet from infected patients, and even in air samples obtained from hallways outside the patients' rooms.¹² Another study indicated that air conditioning can spread the virus farther than anticipated within an indoor space.¹³ In addition to wearing facemasks, the CDC recommends that hospitals place COVID-19 patients in Airborne Infection Isolation Rooms (AIIRs), which are designed to capture the air and expel it outside the building rather than allowing it to circulate through the building and potentially infect other individuals.¹⁴ That hospitals take heightened measures to direct airflow—in addition to wearing masks—suggests that there may be a risk of spreading the virus within the same room or even the same building as an infected individual.¹⁵

Factoring in the highly infectious nature of the virus, decision-makers have made the difficult choice to close down nonessential businesses for over a month, despite the devastating economic

¹² Santarpia JL, Rivera DN, Herrera V, et al. *Transmission potential of SARS-CoV-2 in viral shedding observed at the University of Nebraska Medical Center* (published online Mar. 26, 2020) <https://doi.org/10.1101/2020.03.23.20039446>.

¹³ Lu J, Gu J, Li K, Xu C, Su W, Lai Z, et al. *COVID-19 Outbreak Associated with Air Conditioning in Restaurant, Guangzhou, China, 2020*. EMERG INFECT DIS. 2020 Jul (Apr. 2, 2020) available at https://wwwnc.cdc.gov/eid/article/26/7/20-0764_article.

¹⁴ Centers for Disease Control and Prevention, *What Healthcare Personnel Should Know About Caring for Patients with Confirmed or Possible Coronavirus Disease 2019 (COVID-19)*, (Mar. 12, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/hcp/caring-for-patients-H.pdf>. “AIIRs are single-patient rooms equipped with negative air pressure relative to the surrounding areas, and with a minimum of 6 air changes per hour (12 air changes per hour are recommended for new construction or renovation). Air from these rooms should be exhausted directly to the outside or be filtered through a high-efficiency particulate air (HEPA) filter directly before recirculation.” Center for Disease Control and Prevention, *Airborne Infection Isolation Room (AIIR)*, (Nov 5, 2015), <https://www.cdc.gov/infectioncontrol/guidelines/isolation/glossary.html>.

¹⁵ See also Lidia Morawska and Junji Cao, U.S. National Library of Medicine National Institutes of Health, *Airborne Transmission of SARS-CoV-2: the World Should Face the Reality* (Apr. 10, 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7151430/> (arguing that increased measures should be taken to ensure adequate ventilation within buildings given likelihood that COVID-19 spreads by air).

impact.¹⁶ And although essential, courts across the country and in this region have elected to postpone trials, sentencings, and other important proceedings due to COVID-19. Jury trials in the Northern District of Texas have been postponed through May 31. Given the serious nature of this global pandemic, Mr. Bell respectfully requests that the Court exercise its discretion and extend Mr. Bell's self-surrender date for 60 days.

II. Taking Mr. Bell Allen Into Custody During this Time Poses Additional Risks to Public Health and Safety

When Mr. Bell self-surrenders, it will be to the federal BOP. Specifically, Mr. Bell is designated to report to FMC Fort Worth. As explained below, COVID-19 is spreading rapidly throughout the Federal Bureau of Prisons (BOP) and the state prison system.

Incarceration poses a grave public health threat during this crisis. Much like cruise ships and nursing homes, jails are extremely dangerous in a pandemic, given the impossibility of social distancing in a confined space.¹⁷ As shown in the attached Exhibit 1, recent data shows that the virus is rapidly spreading within BOP, at a rate that far exceeds the spread of the virus in the rest of the country. Exhibit 2 shows that infection rates within BOP are *over three times* that in the United States and Italy, two of the countries with the highest infection rates in the world. As the data reflects, conditions of confinement create the ideal environment for the transmission of a highly contagious disease such as COVID-19. Jails are notoriously unhygienic, with little access to soap and water. Prisoners have no way to practice "social distancing" or other protective measures that are mandated by health officials

¹⁶ Effective April 2, 2020, Texas Governor Greg Abbott issued an executive order closing down gyms, hair salons, barbershops, tattoo parlors, retail stores and other non-essential businesses, and requiring that restaurants and bars operate on a drive-thru or pickup only basis. While some of the restrictions are being eased, and businesses such as restaurants will soon be permitted to re-open, the re-openings are subject to conditions such as operating at 25 percent capacity. Patrick Svitek, *Gov. Greg Abbott to Let Restaurants, Movie Theaters and Malls Open with Limited Capacity Friday* (Apr. 27, 2020) <https://www.texastribune.org/2020/04/27/texas-reopening-coronavirus-greg-abbott/>.

¹⁷ Dr. Jeffrey Keller, *COVID-19 in Jails? It Might Get Ugly*, Medpage, (March 12, 2020), <https://www.medpagetoday.com/blogs/doing-time/85366>.

throughout the nation and which promise some hope of surviving the consequences of infection. People cycle in and out of pretrial facilities daily, and people who work in the facilities leave and return daily, usually without screening. All of these individuals potentially can carry the virus from the facility to their homes and communities, and then return back, bringing new germs with them.

This is especially true for the state and federal facilities in our area. FMC Fort Worth currently has the second-highest number of infected inmates out of any federal BOP facility in the nation, with 467 inmates and 1 staff member testing positive for COVID-19, and 4 inmate deaths.¹⁸

This is especially dangerous for Mr. Bell because he suffers from asthma. Since Mr. Bell suffers from asthma, he is among the population that is at higher risk of severe illness, and/or death, if he contracts COVID-19.¹⁹ Mr. Bell is practicing social distancing to protect himself from the virus. He asks the Court to postpone his self-surrender date and allow him to remain on conditions for another 60 days, in light of the global pandemic.

Conclusion

As explained above, there are significant health and safety risks to Mr. Bell and others if he self-surrenders on May 18. Given the above and the alarming rate at which COVID-19 is spreading within BOP, Mr. Bell respectfully requests that this Court exercise its discretion and extend his time to self-surrender for 60 days.

¹⁸ Federal Bureau of Prisons, *COVID-19 Coronavirus Cases, Full Breakdown and Additional Details*, <https://www.bop.gov/coronavirus/> (last visited May 6, 2020). **Counsel understands that the number of infected staff members is likely underreported, due to the fact that staff are not being tested .**

¹⁹ *Information for Healthcare Professionals: COVID-19 and Underlying Conditions*, <https://www.cdc.gov/coronavirus/2019-ncov/hcp/underlying-conditions.html> (last visited May 6, 2020).

Respectfully submitted,

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Certificate of Service

I, Brook Antonio, II, hereby certify that on May 7, 2020, I electronically filed the Motion to Extend Self-Surrender Date with the clerk for the U.S. District Court, Northern District of Texas, using the electronic filing system for the Court. The electronic case filing system sent a “Notice of Electronic Filing” to AUSA Levi Thomas.

/s/ Brook Antonio, II
Brook Antonio, II